

AMENDED IN SENATE MAY 12, 2003

SENATE BILL

No. 269

Introduced by Senator Soto

February 18, 2003

An act to ~~amend Section 20150~~ add Section 22212.5 to the Education Code, and to amend Section 20098 of the Government Code, relating to public employees' retirement, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 269, as amended, Soto. Public employees' retirement: manager compensation.

Existing law authorizes the Board of Administration of the Public Employees' Retirement System to appoint and fix the compensation of an executive officer, assistant executive officer, and other necessary employees. Existing law also authorizes the Teachers' Retirement Board to appoint a chief executive officer and other employees as are necessary to administer the Teachers' Retirement System.

This bill would authorize those retirement boards to appoint and fix the compensation of, according to specified principles, an executive officer, an actuary, investment officers, portfolio managers, and other necessary employees, as specified. The bill would specify that those positions, when filled through a civil service appointment, would be subject to the provisions of existing law establishing the tenure of managerial employees under state civil service. The bill would make related findings and declarations.

The bill would declare that it is to take effect immediately as an urgency statute.

~~The Public Employees Retirement Law requires the board of the Public Employees' Retirement System to satisfy specified fiduciary duties.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: ~~majority~~ ^{2/3}. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 20150 of the Government Code is~~
2 ~~SECTION 1. The Legislature finds and declares all of the~~
3 ~~following:~~
4 ~~(a) Section 17 of Article XVI of the California Constitution~~
5 ~~provides that "the retirement board of a public pension or~~
6 ~~retirement system shall have the sole and exclusive fiduciary~~
7 ~~responsibility over the assets of the public pension or retirement~~
8 ~~system. The retirement board shall also have sole and exclusive~~
9 ~~responsibility to administer the system in a manner that will assure~~
10 ~~prompt delivery of benefits and related services to the participants~~
11 ~~and their beneficiaries. The assets of a public pension or~~
12 ~~retirement system are trust funds and shall be held for the exclusive~~
13 ~~purposes of providing benefits to participants in the pension or~~
14 ~~retirement system and their beneficiaries and defraying~~
15 ~~reasonable expenses of administering the system."~~
16 ~~(b) In order to permit the Board of Administration of the~~
17 ~~California Public Employees' Retirement System and the~~
18 ~~Teachers' Retirement Board to exercise their fiduciary~~
19 ~~responsibility pursuant to Section 17 of Article XVI of the~~
20 ~~California Constitution, the Department of Personnel~~
21 ~~Administration established certain senior executive positions and~~
22 ~~investment management positions at both systems that were~~
23 ~~exempt from civil service, and subsequently delegated authority to~~
24 ~~the Board of Administration and the Teachers' Retirement Board~~
25 ~~to establish additional exempt positions and determine the~~
26 ~~compensation paid to those employees pursuant to compensation~~
27 ~~policies established by the respective boards.~~
28 ~~(c) The Court of Appeal for the Third District of California, in~~
29 ~~Westly v. Board of Administration (Feb. 25, 2003, C039686)~~
30 ~~_____ Cal.App. 4th _____ [2003 Cal.App. Lexis 271], held that,~~

1 notwithstanding Section 17 of Article XVI of the California
2 Constitution, Article VII of the California Constitution limited the
3 number of California Public Employees' Retirement System
4 positions that may be exempt from civil service to only one
5 employee selected by the Board of Administration, and that
6 compensation paid to employees was subject to the authority of the
7 Department of Personnel Administration.

8 (d) The continued ability of the Board of Administration and
9 the Teachers' Retirement Board to meet their fiduciary obligation
10 to their members requires that they be able to attract and retain
11 employees in key senior executive and investment management
12 positions with compensation that is consistent with the
13 compensation paid to employees in other public retirement and
14 financial service organizations.

15 (e) The express purpose of this act is to enable the Board of
16 Administration and the Teachers' Retirement Board to attract and
17 retain key personnel by empowering those boards to establish both
18 appropriate classifications within the civil service for its senior
19 executive and investment management employees and the
20 compensation paid to those employees, competitive with the
21 compensation paid to employees in other retirement and financial
22 service entities, consistent with the holding of *Westly v. Board of*
23 *Administration*, and notwithstanding the provisions of the
24 Government Code that provide the State Personnel Board and the
25 Department of Personnel Administration that authority.

26 SEC. 2. Section 22212.5 is added to the Education Code, to
27 read:

28 22212.5. (a) This section shall apply to the following
29 positions in the system: chief executive officer, system actuary,
30 chief investment officer, and other investment officers and
31 portfolio managers whose positions are designated managerial
32 pursuant to Section 18801.1 of the Government Code.

33 (b) Notwithstanding Sections 19825 and 19826 of the
34 Government Code, the board shall fix the compensation for the
35 positions specified in subdivision (a). In so doing, the board shall
36 be guided by the principles contained in Sections 19826 and 19829
37 of the Government Code, consistent with its fiduciary
38 responsibility to its members to recruit and retain highly qualified
39 and effective employees for these positions.

1 (c) When a position specified in subdivision (a) is filled through
2 a general civil service appointment, it shall be filled from an
3 eligible list based on an examination that was held on an open
4 basis, and tenure in those positions shall be subject to the
5 provisions of Article 2 (commencing with Section 19590) of
6 Chapter 7 of Part 2 of Division 5 of Title 2 of the Government Code.
7 In addition to the causes for action specified in that article, the
8 board may take action under the article for causes related to its
9 fiduciary responsibility to its members, including the employee's
10 failure to meet specified performance objectives.

11 SEC. 3. Section 20098 of the Government Code is amended to
12 read:

13 20098. (a) The board shall appoint and, notwithstanding
14 Sections 19825 and 19826, shall fix the compensation of an
15 executive officer, ~~assistant executive officers~~, a chief actuary, a
16 chief investment officer, and other investment officers, portfolio
17 managers, and other necessary employees whose positions are
18 designated managerial pursuant to Section 18801.1. ~~The~~

19 (b) The executive officer, deputy executive officers, and the
20 assistant executive officers may administer oaths.

21 (c) When fixing the compensation for the positions specified in
22 subdivision (a), the board shall be guided by the principles
23 contained in Sections 19826 and 19829, consistent with its
24 fiduciary responsibility to its members to recruit and retain highly
25 qualified and effective employees for these positions.

26 (d) When a position specified in subdivision (a) is filled through
27 a general civil service appointment, tenure in the position shall be
28 subject to the provisions of Article 2 (commencing with Section
29 19590) of Chapter 7 of Part 2 of Division 5 of Title 2. In addition
30 to the causes for action specified in that article, the board may take
31 action under the article for causes related to its fiduciary
32 responsibility to its members, including the employee's failure to
33 meet specified performance objectives.

34 SEC. 4. This act is an urgency statute necessary for the
35 immediate preservation of the public peace, health, or safety
36 within the meaning of Article IV of the Constitution and shall go
37 into immediate effect. The facts constituting the necessity are:

38 In order to resolve any uncertainty regarding the employment
39 status of key employees of the Public Employees' Retirement
40 System and the Teachers' Retirement System and to thereby enable

1 *those systems to carry out their fiduciary responsibilities to hire*
2 *and retain qualified individuals in those key positions, it is*
3 *necessary that this act take effect immediately.*

4 ~~amended to read:~~

5 ~~20150. — A board member or employee of the board may not,~~
6 ~~directly or indirectly:~~

7 ~~(a) Have any interest in the making of any investment, or in the~~
8 ~~gains or profits accruing therefrom.~~

9 ~~(b) For himself or herself or as an agent or partner of others,~~
10 ~~borrow any funds or deposits of this system, nor use those funds~~
11 ~~or deposits in any manner except to make current and necessary~~
12 ~~payments authorized by the board.~~

13 ~~(c) Become an indorser, surety or obligor on investments by the~~
14 ~~board.~~

